

Honorable ~~GO TO JUDGE~~ MR. Thomas S. Zilly

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AT SEATTLE
 CLERK U.S. DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 DEPUTY



CV 02-01683 #00000008

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

VALVE, L L.C., a Washington limited liability
 company,

Plaintiff,

v

SIERRA ENTERTAINMENT, INC (AKA
 SIERRA ON-LINE, INC),

Defendant

No CV02-1683

ANSWER, COUNTERCLAIM
 AND JURY DEMAND

ANSWER

Defendant, Sierra Entertainment, Inc ("Sierra") by and through its below named
 counsel, answers plaintiff's Complaint as follows:

I. JURISDICTION AND VENUE

1 Responding to the allegations of paragraph one of the Complaint, Sierra admits
 2 that plaintiff alleges copyright infringement, Sierra denies that it has infringed any copyrights,
 3 and denies every other allegation in said paragraph one

4 2 Responding to the allegations of paragraph two, Sierra admits that the Court
 5 has subject matter jurisdiction with respect to activities within the ambit of United States
 6 copyright law, denies that the Court has subject matter jurisdiction with respect to overseas

8

activities or actions of Sierra outside the ambit of United States copyright law, and admits the Court's personal jurisdiction over it.

3 Sierra admits the allegations in paragraph three of the Complaint

II. THE PARTIES

4 Responding to the allegations in paragraph four of the Complaint, Sierra admits that Valve is a Washington limited liability company having a principal place of business as alleged, and admits the allegations as to awards received by Valve. Sierra denies that Valve is the sole developer of the Valve Games, and denies every other allegation in said paragraph four.

5 Sierra admits the allegations in paragraph five of the Complaint

III. STATEMENT OF FACTS

6 Responding to the allegations in paragraph six of the Complaint, Sierra admits that the Valve Games include the Valve Engine. Sierra is without information or knowledge sufficient to form a belief as to the truth as to the remaining allegations in said paragraph six, and therefore denies each such allegation.

7 Responding to the allegations of paragraph seven of the Complaint, Sierra admits that it entered into a Software Publishing Agreement on March 29, 2001, but denies the remainder of the allegations in said paragraph seven. Sierra affirmatively states that the agreement, as amended, speaks for itself, and Sierra denies that the agreement and amendments constitute the entire scope of the parties' agreement.

8 Responding to the allegations of paragraph eight, Sierra admits that it has and continues to distribute and license certain of the Valve Games to "internet cafes", and denies every other allegation in said paragraph eight.

9. Sierra denies every allegation in paragraph nine of the Complaint

COUNT ONE

COPYRIGHT INFRINGEMENT UNDER 17 U.S.C. § 501

1 10 In response to paragraph ten of the Complaint, Sierra incorporates its above
2 responses to paragraphs one through nine

3 11. Sierra is without information or knowledge sufficient to form a belief as to the
4 truth of the allegations in paragraph eleven, and therefore denies them

5 12 Sierra is without information or knowledge sufficient to form a belief as to the
6 truth of the allegations in paragraph twelve, and therefore denies them.

7 13 Sierra admits that it has and continues to distribute and license one or more of
8 the Valve Games to "cyber cafes". Sierra denies every other allegation in paragraph thirteen
9 of the Complaint

10 14 Sierra denies every allegation in paragraph fourteen of the Complaint

11 **AFFIRMATIVE DEFENSES**

12 15 Plaintiff's Complaint fails to state a claim upon which relief can be granted

13 16 This Court lacks subject matter jurisdiction to adjudicate all or some of the
14 claims set forth in plaintiff's Complaint.

15 17 Plaintiff, by its conduct, has waived or is estopped from asserting its claims
16 against Sierra

17 18 *Some or all of the relief sought by the Plaintiff is barred pursuant to 17 U S C*
18 *§ 412*

19 **COUNTERCLAIM**

20 19 This is a counterclaim seeking the Court's adjudication and declaration of
21 rights between the parties, pursuant to 28 U S.C. § 2201(a), as to the Software Publishing
22 Agreement between the parties dated March 29, 2001, and its addenda

23 20 This Court has personal jurisdiction over plaintiff and counterdefendant Valve
24 LLC ("Valve"), as Valve is a Washington limited liability company having its principal place
25 of business in this district, and by virtue of Valve's activities conducting business in this
26 district
27

21 This Court has subject matter jurisdiction over Sierra's claim for declaratory judgment pursuant to 28 U.S.C. § 1338(a), with respect to Valve's and Sierra's activities within the ambit of United States copyright law

22 Venue is proper in this Court pursuant to 28 U.S.C. § 1391

23 By virtue of Valve's complaint against Sierra in this action, there exists an actual case or controversy as to Sierra's rights to manufacture, distribute, rent, lease and license the Valve Games to internet cafes within the United States, as Retail Packaged Product

24 If the Court determines that it has subject matter jurisdiction over the playing of Valve Games in internet cafes outside the United States, then an actual case or controversy exists as to whether Sierra has the right to manufacture, distribute, rent, lease or license the Valve Games to internet cafes outside the United States, as Retail Packaged Product

25. All of Sierra's activities with respect to licensing the Valve Games to internet cafes, both inside and outside the United States, are within the scope of the license rights granted to Sierra under the Software Publishing Agreement dated March 29, 2001, and addenda.

26 All of Sierra's activities with respect to licensing the Valve Games to internet cafes, both inside and outside the United States, are within the scope of other express or implied license rights granted to Sierra by Valve

27. Both before and after execution of the Software Publishing Agreement, Valve had actual and constructive knowledge that Sierra was licensing the Valve Games to internet cafes both inside and outside the United States, and this licensing activity was undertaken with the express or implied approval of agents of Valve having actual or apparent authority to approve. In reliance on Valve's approval, Sierra has entered into contractual licenses with internet cafes both before and after execution of the Software Publishing Agreement

28 By its conduct, Valve has waived its rights to object to Sierra's activities concerning internet cafes, or Valve is estopped from claiming that Sierra's license rights do not permit Sierra's activities concerning internet cafes.

29 Wherefore, Sierra is entitled to the Court's declaratory judgment that it has, and in the past had, the right to license the Valve Games to internet cafes both inside and outside the United States

PRAYER FOR RELIEF

Wherefore, having answered, Sierra prays the court for the following relief:

A That the Court dismiss, for lack of subject matter jurisdiction, that part of plaintiff's complaint that relates to activities outside the ambit of United States copyright law, or where copyright is governed by the law of a foreign sovereign,

B That judgment enter in favor of Sierra and against Valve as to all causes of action set forth in plaintiff's Complaint,

C That judgment enter in favor of Sierra and against Valve as to the cause of action set forth in Sierra's Counterclaim, and that the Court declare that Sierra has, and has in the past had, rights under the Software Publishing Agreement to license the Valve Games to internet cafes.

D That Sierra have its costs, expert witness fees, and attorney's fees as provided by agreement between the parties, or by law or any applicable statute; and

E Such other and further relief as the Court may deem just and proper

JURY DEMAND

Sierra demands trial to the jury as to all issues so triable

Dated this 25 day of NOVEMBER, 2002

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}

F Ross Boundy, WSBA No 403
Robert J Carlson, WSBA No 18,455
Mark P. Walters, WSBA No 30,819


Attorneys for Defendant
Sierra Entertainment, Inc

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of November, 2002, the original of the ANSWER, COUNTERCLAIM AND JURY DEMAND was filed with the Court and a true copy was served in the manner listed below

Via Hand Delivery to

Karl J Quackenbush
Jason P Holtman
Kristen J Boraas
Preston Gates & Ellis
701 Fifth Avenue, Suite 5000
Seattle, Washington 98104
Attorneys for Plaintiff Valve L.L.C


(signature)